

**RECORDING REQUESTED BY:**

Harbor Gate Partners  
1 Bates Boulevard, Suite 200  
Orinda, California 94563

**WHEN RECORDED, MAIL TO:**

Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, CA 94710  
Attention: Barbara J. Cook, P.E., Chief  
Northern California Coastal Cleanup Operations Branch



CONTRA COSTA Co Recorder Office  
STEPHEN L. WEIR, Clerk-Recorder  
**DOC- 2003-0049114-00**

Friday, JAN 31, 2003 11:16:40

FRE \$0.00

Ttl Pd \$0.00

Nbr-0001294561

rrc/R9/1-11

**COVENANT TO RESTRICT USE OF PROPERTY  
ENVIRONMENTAL RESTRICTION**

ThermoRetec Property  
Meeker Avenue Near Marina Bay Parkway  
Richmond, California  
APN 560-170-017

This Covenant and Agreement ("Covenant") is made by and between the Harbor Gate Partners, a California limited partnership (the "Covenantor"), the current owner of property situated in Richmond, County of Contra Costa, State of California, described in Exhibit "A," attached hereto and incorporated herein by this reference (the "Property"), and the Covenantee, the California Department of Toxic Substances Control, a state agency (the "Department"). This Property is approximately 1.1 acre. Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of "hazardous materials" as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties," therefore, intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment.

**ARTICLE I.**  
**STATEMENT OF FACTS**

1.1 The Property is located in the area generally bounded by Wright Avenue and Interstate 580 to the north, a vacant property to the east, Meeker Avenue to the south, and a light industrial business park to the west, County of Contra Costa, State of California. This Property, which is more specifically described as Contra Costa County Assessor's Parcel No. 560-170-017, was part of the property on which ThermoRetec/ThermoNutech ("ThermoRetec") currently operates a laboratory facility that provides radiochemistry analytical services.

1.2 Soil on the Property was contaminated with lead and zinc.

Contamination resulted from the handling of solder dross and disposal of residual material from Summer del Caribe's metal reclamation facility that operated on the adjacent property. Lead- and zinc-contaminated soil were removed from the Property as part of the remediation of the Summer del Caribe Site. The Department approved a Final Remedial Action Plan for the Summer del Caribe Site in September 1995. A Potentially Responsible Party Group implemented the Final Remedial Action in 1996. Soil with lead concentrations exceeding the residential soil cleanup level for lead established by the Final Remedial Action Plan, 238 parts per million, was excavated and disposed at permitted off-site facilities. The excavated areas on the Property were backfilled with clean soil. The Department certified the completion of the remedial action on May 9, 1997.

1.3 A subsurface investigation was conducted on the Property by PES

Environmental, Inc. ("PES") to assess the Property for the presence of residual contamination in soil and groundwater that may have resulted from operations at the ThermoRetec and former Summer del Caribe facilities. Grab groundwater samples collected at the Property generally indicate low concentrations of volatile organic compounds ("VOCs") are present across the site. Trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), cis-1,2-dichloroethylene ("cis-1,2-DCE"), 1,1-dichloroethylene ("1,1-DCE"), 1,1-dichloroethane ("1,1-DCA"), vinyl chloride, benzene, toluene, and acetone were detected in the grab groundwater samples. Subsequent installation and sampling of groundwater monitoring wells confirms the presence of VOCs in groundwater. Monitoring well sampling also indicates that there is an area with higher VOC concentrations located in the south-central portion of the Property, in the vicinity of monitoring wells MW-1, MW-3 and MW-6. A map depicting the estimated extent of elevated VOC concentrations is attached hereto as Exhibit "B". The presence of cis-1,2-DCE and vinyl chloride in groundwater samples suggests that natural degradation of TCE and PCE is occurring at the site.

1.4 Based on the results of the subsurface investigation, PES

performed a focused health risk assessment ("HRA") to evaluate the potential risk to future building occupants from inhalation of VOCs which could migrate from groundwater into the buildings. Groundwater sample results from beneath the potential building locations were used in this evaluation. PES conducted the HRA based on the assumption that development on the Property would be for commercial purposes and the assumption that future buildings would not be constructed in the area of significant VOC concentrations in groundwater. The results of the vapor flux simulations and health risk calculations indicate that volatilization of VOCs from groundwater beneath potential building locations would not result in VOC concentrations in indoor air that would present a significant health risk to future building occupants. PES recommended that buildings not be constructed over the area with significant VOC concentrations in groundwater.

**ARTICLE II.**  
**DEFINITIONS**

2.1 Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.2 Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.3 Occupant. "Occupant" means Owners and any person or entity entitled by ownership or leasehold to occupy any portion of the Property.

**ARTICLE III.**  
**GENERAL PROVISIONS**

3.1 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), to which the Property is subject notwithstanding how the Property is improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction : (a) runs with the land pursuant to Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of , and is enforceable by, the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.2 Binding upon Owners/Occupants. Pursuant to Civil Code section 1471(b), this Covenant expressly binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees.

3.3 Written Notice of Release of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the owner, lessor, or sublessor shall give the buyer, lessees, or sublessee a copy of this Covenant.

3.4 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.5 Conveyance of Property. Covenantor agrees that the Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

**ARTICLE IV.**  
**RESTRICTIONS AND OBLIGATIONS**

4.1 Prohibited Uses. Future use of the Property shall be restricted to industrial and/or commercial use only, and the Property shall not be used for any of the following purposes:

- (a) A permanent residence, including but not limited to any mobile home or factory built housing, constructed or installed for use as residential human habitation. A permanent residence does not include a hotel, motel, or other temporary habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.2 Limitations on Development. Development on or under the area with high VOC concentrations in groundwater and the area within 25 feet beyond the periphery of this area, described in Exhibit B as the Restricted Development Area shall be limited to landscaping, construction of pavement, and installation of electrical supply for outdoor lighting. Any other development shall require approval by the Department.

4.3 Restrictions on Use of Groundwater. Covenantor agrees:

- (a) Installation and/or pumping of any water-producing wells, including but not limited to water supply, irrigation, or private wells shall not be permitted on the Property.
- (b) Extraction and use of groundwater underlying the Property, for any purpose other than groundwater monitoring under the oversight of the Department, shall be prohibited, except as provided in Section 4.5.

4.4 Non-Interference with Groundwater Monitoring Wells. Activities that may damage or compromise the integrity of groundwater monitoring wells, other than proper abandonment with the approval of the Department, shall not be permitted.

4.5 Health and Safety and Soil Management Plans. Any soil grading, excavation of soil, or foundation or utility installation activities on the Property that extend below the ground surface more than five (5) feet shall be performed in accordance with a Health and Safety Plan and all applicable state and federal occupational safety and health standards. The Health and Safety Plan shall identify the measures necessary to protect workers and to prevent their exposure to volatile organic compounds that occur in groundwater under the Property. Any soils brought to the surface or disturbed at a depth greater than five (5) feet by grading, excavation, and trenching shall be handled in accordance with a Soil Management Plan approved by the Department. The Soil Management Plan shall also address the handling of groundwater removed for the purpose of excavation or construction dewatering and the

procedures to be followed if previously unknown areas of contamination are encountered.

4.6 Access for Department. The Department, and its employees, contractors, and consultants shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety. Nothing in this Covenant shall impair, limit or prejudice the right of the Department to enter the Property that it otherwise possesses by operation of law.

#### **ARTICLE V.** **ENFORCEMENT**

5.1 Enforcement. Violation of this Covenant shall be grounds for the Department to file legal actions as provided by law.

#### **ARTICLE VI.** **VARIANCE, TERMINATION, AND TERM**

6.1 Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.2 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.3 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

#### **ARTICLE VII.** **MISCELLANEOUS**

7.1 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.2 Department References. All references to the Department include successor agencies/departments or other successor entity.

7.3 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Contra Costa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.4 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to

this Covenant), each such Notice; shall be deemed effective: (1) When delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Harbor Gate Partners,  
1 Bates Boulevard  
Orinda, California 94563

To Department: Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710  
Attention: Barbara J. Cook, P.E., Chief  
Northern California Coastal Cleanup Operations  
Branch

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.


7.5 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.6 Authority to Bind. Each of the signatories below warrants and represents that he or she is authorized to execute this Covenant of behalf of its respective Party and to legally bind same to the terms and conditions of this Covenant.

IN WITNESS WHEREOF, the Parties execute this Covenant.

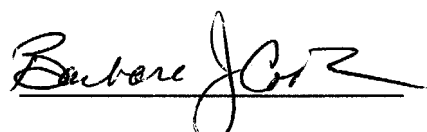
Covenantor – Harbor Gate Partners

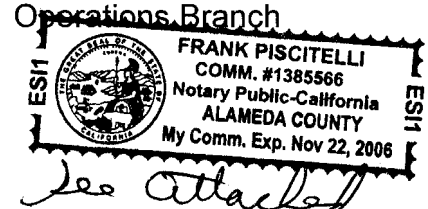
Date: 1-28-03

By:   
Ronald C. Nahas, President

Department of Toxic Substances Control

Date: 1-30-2003

By:   
Barbara J. Cook, Branch Chief  
Northern California Coastal Cleanup  
Operations Branch



049114

STATE OF CALIFORNIA )  
 )  
COUNTY OF Contra Costa

On this 28 day of January, in the year 2003, before me ,

Yvette S. Hoyer, personally appeared \_\_\_\_\_

\_\_\_\_\_  
Ronald C. Nahas  
\_\_\_\_\_

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to  
be the persons whose names are subscribed to the within instrument and  
acknowledged to me that they executed the same in their authorized capacities,  
and that by their signatures on the instrument the persons, or the entity upon  
behalf of which the persons acted, executed the instrument. WITNESS my hand  
and official seal.

Signature: *Yvette S. Hoyer*



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

049114

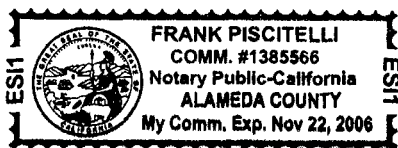
State of CALIFORNIA

County of ALAMEDA

On 1/30/03 before me, FRANK PISCITELLI,  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared BARBARA JEAN COOK,  
Name(s) of Signer(s)

☐ personally known to me -OR- ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal

Frank Piscitelli  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

## Description of Attached Document

Title or Type of Document: Harbor Gate - Covenant to Rent Use

Document Date: 1/28/03 Number of Pages: 1

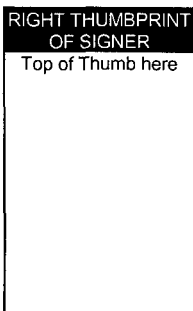
Signer(s) Other Than Named Above: \_\_\_\_\_

## Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual
- ☐ Corporate Officer
- ☐ Titles(s): \_\_\_\_\_
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

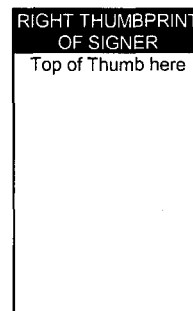
Signer Is Representing: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



Signer's Name: \_\_\_\_\_

- ☐ Individual
- ☐ Corporate Officer
- ☐ Titles(s): \_\_\_\_\_
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_





## Exhibit A

The land referred to in this Report is situated in the County of Contra Costa, City of Richmond,  
State of California, and is described as follows:

PORTION OF LOTS 14, 15, 16, 17, 18 AND 19 IN BLOCK 32, PORTIONS OF LOTS 14, 15, 16, 17, 18, 22 AND 31, AND ALL OF LOTS 23, 24, 25, 26, 27, 28, 29 AND 30, IN BLOCK 33, A PORTION OF TWENTY-FIRST STREET, FORMERLY TWENTIETH STREET, AND A 15 FEET IN WIDTH ALLEY LYING WITHIN BLOCK 33, AS DESIGNATED ON THE MAP ENTITLED "AMENDED MAP OF MEEKER'S ADDITION TO POINT RICHMOND", FILED JULY 9, 1907, MAP BOOK 1, PAGE 9, CONTRA COSTA COUNTY RECORDS, PURSUANT TO LOT LINE ADJUSTMENT 00-6 BY THE CITY OF RICHMOND, DESCRIBED AS FOLLOWS:

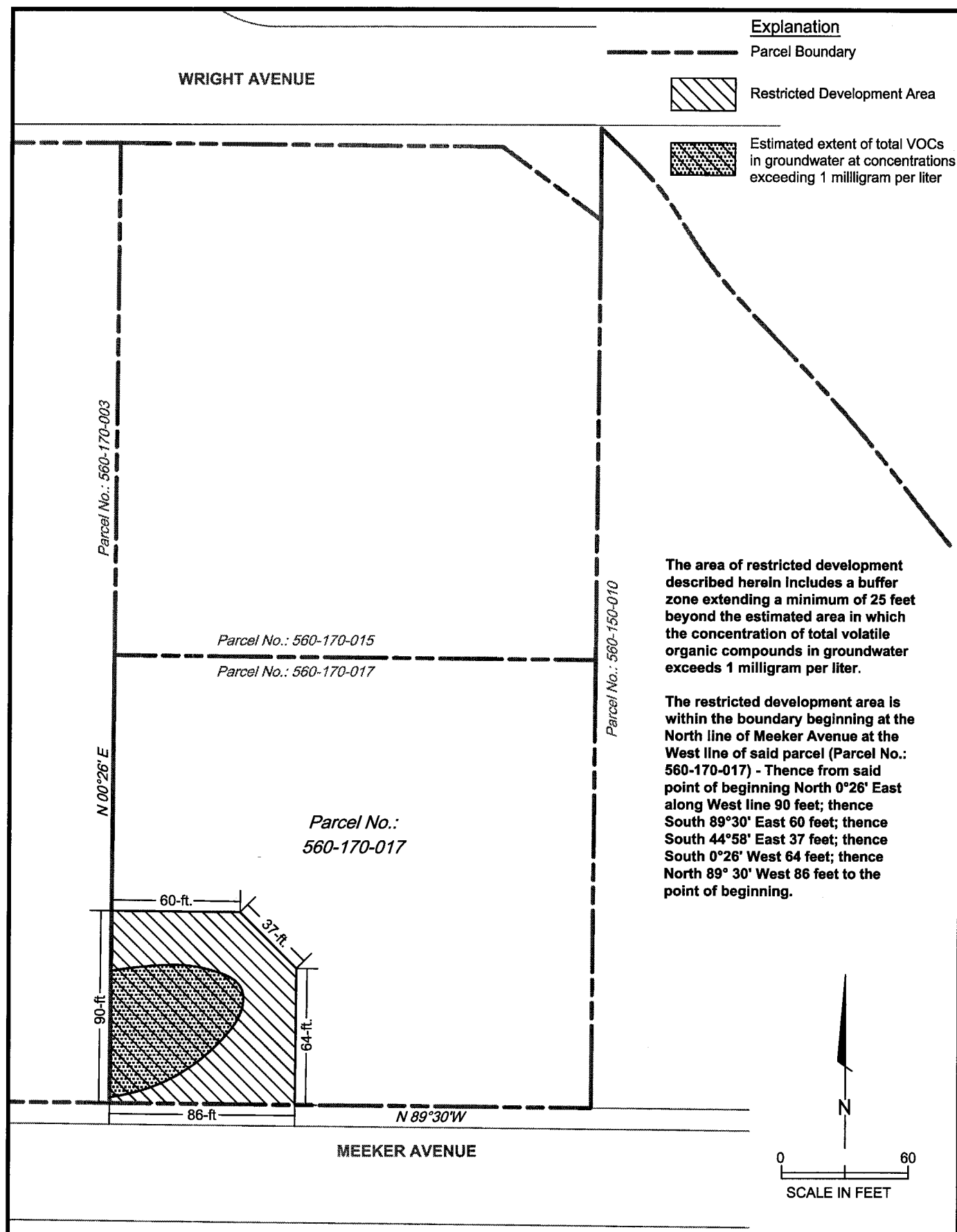
COMMENCING ON THE SOUTH LINE OF WRIGHT AVENUE AT THE WEST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM THE CITY OF RICHMOND TO MAXWELL REID, ET AL, DATED SEPTEMBER 29, 1952, RECORDED FEBRUARY 27, 1953, (FILE NO. 9740); THENCE FROM SAID POINT OF COMMENCEMENT NORTH 89°30'00" WEST ALONG SAID SOUTH LINE, 225.00 FEET; THENCE SOUTH 0°26'00" WEST, 450.00 FEET TO THE SOUTH LINE OF SAID BLOCK 32, BEING THE NORTH LINE OF MEEKER AVENUE; AND THE POINT OF BEGINNING OF THE PARCEL TO BE DESCRIBED; THENCE FROM SAID POINT OF BEGINNING, SOUTH 89°30'00" EAST, ALONG SAID SOUTH LINE 225.00 FEET TO THE WEST LINE OF SAID REID PARCEL (FILE NO. 9740); THENCE NORTH 0°26'00" EAST ALONG SAID WEST LINE, 210.00 FEET; THENCE NORTH 89°30'00" WEST 225.00 FEET; THENCE SOUTH 0°26'00" WEST, 210.00 FEET TO THE POINT OF BEGINNING.

(Being APN 560-170-017)

**049114**

**EXHIBIT B**

**Map Showing Restricted Development Area**

**Exhibit B**

**Restricted Development Area**  
**Parcel 560-170-017**

ThermoRetech Property  
 Richmond, California

**END OF DOCUMENT**